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For The Northern Mariana Islands
By _____
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

JOHN S. PANGELINAN,

Plaintiff,

vs.

DAVID A. WISEMAN, et al.,

Defendants.

**ANGELITO TRINIDAD, RONNIE
PALERMO, HERMAN TEJADA,
ESPERANZA DAVID, ANTONIO
ALOVERA , and UNITED
STATES OF AMERICA,**

Respondents.

Case No. CV 08-0004

**REPLY OF ROY
ALEXANDER AND RUFO T.
MAFNAS TO OPPOSITION
TO MOTION TO DISMISS
PURSUANT TO RULE
12(b)(6)**

Date: April 17, 2008

Time: 9 am

Judge: Tydingco-Gatewood

INTRODUCTION

In Opposition to Roy Alexander's and Rufo Mafnas's Motion to Dismiss, Plaintiff John S. Pangelinan continues to assert that Alexander and Mafnas comprise part of the "four fingers of the federal hands that actually started, developed, did and completed [sic] the constitutional wrongs against

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1 Pangelinan.” Opposition at 3.^{1/} Tasking Alexander for participating in the sale
2 of his property and Mafnas for purchasing it, Pangelinan charges that these
3 defendants are culpable for the violation of his constitutional rights by virtue of
4 their participation in some sham procedure to deprive him of his land.

5 Pangelinan’s retaliatory criminal prosecution claim fails because the
6 actions of these defendants never infringed on any protected first amendment
7 right. The claim for retaliatory denial of due process of law likewise fails
8 because Pangelinan refused to satisfy the Underlying Judgment voluntarily and
9 prior to the taking of his property in satisfaction of amounts outstanding,
10 received all process to which he was due.

11
12 **A. THERE ARE NO PROTECTED FIRST AMENDMENT RIGHTS AT
13 ISSUE**

14 Pangelinan claims that he was indicted, arrested prosecuted, convicted
15 and imprisoned on account of Alexander’s testimony against him when he
16 publicly criticized the Underlying Judgment and the Order of Sale in his June 1
17 Letter to the newspapers. Pangelinan further attacks Alexander for
18 participating in the sale of his property.

19 To allege a Bivens action for retaliatory prosecution for the exercise of
20 free speech rights, however, Pangelinan must demonstrate that he was

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22 ¹ It is unclear just how this analogy is supposed to work, since Pangelinan has
23 also sued two attorneys, members of the grand jury who indicted him, members of the
jury that convicted him, two judges, probation officers, and federal marshals, among
others.

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1 prosecuted for engaging in constitutionally protected conduct. *E.g., Gates v.*
2 *City of Dallas*, 729 F.2d 343, 346 (5th Cir. 1984). Because true threats of
3 intimidation or physical violence fall outside the ambit of constitutional
4 protection, Mr. Pangelinan cannot prevail on these grounds. *See Watts v.*
5 *United States*, 394 U.S. 705, 707, 89 S.Ct. 1399, 1401, 22 L.Ed.2d 664 (1969).
6 The undisputed facts giving rise to this case, along with the ruling of the Ninth
7 Circuit that “Pangelinan's June 19, 2006, letter contain[ed] language which a
8 rational trier of fact could find expressed a threat of physical harm to person or
9 property,”^{2/} clearly and unequivocally demonstrates that Pangelinan’s June 1
10 Letter did not even approach a protected activity. As pointed out in their
11 Memorandum filed in support of the Motion, Pangelinan’s history of
12 obstruction combined with the threats he had already acted upon rendered the
13 intimidating tactics in the June 1 Letter stand as far from protected activity as
14 one can get. *See Wisconsin v. Mitchell*, 508 U.S. 476, 484, 113 S. Ct. 2194,
15 2199, 124 L.Ed.2d 436 (1993) (noting the line between expressions of belief
16 that are protected by the First Amendment and threats of force, which are not).
17 Because the threats were not protected by the First Amendment, the claim for
18 retaliatory criminal prosecution fails. *See Skoog v. County of Clackamas*, 469
19 F.3d 1221, 1232 (9th Cir. 2006).

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23 ² *United States v. Pangelinan*, 2007 WL 2962354 (9th Cir. 2007) (slip op.).

**B. THE CLAIM FOR RETALIATORY DENIAL OF DUE PROCESS
ALSO FAILS**

Pangelinan challenged the validity of the judicial sale because it did not take place at the federal courthouse and now contends that the wrong procedures were used to dispose of his property. *See* Complaint at 8; Opposition at 7. Consistent with CNMI law, however, the Order Authorizing Execution provided that the sale of the Papago Property was to be made to the highest bidder, following adequate publication of the sale, “at such place, and on such date and at such time as may be fixed by Mr. Alexander in a Notice of Sale.” Order Authorizing Roy Alexander to Levy Execution (No. 491). The Order authorizing Mr. Alexander to sell the property was issued in accordance with CNMI law to execute on a valid judgment;^{3/} there is no dispute, moreover, that the sale was public, that it took place after notice and publication, there was competitive bidding, and the property was sold to the highest bidder. Accordingly, the sale was not void.

Although Plaintiff contends that he was improperly ousted from his property following the sale of execution and the delivery of the deed to

³ Pangelinan’s objections to the Underlying Judgment, on grounds of subject matter and personal jurisdiction, are barred by res judicata and are plainly frivolous since the district court and the Ninth Circuit have rejected Pangelinan’s objections to jurisdiction numerous times. *See Trinidad v. Pangelinan*, 54 F. Appx 470 (9th Cir. 2003)(affirming district court’s ruling and denying further filings in closed appeal); *Trinidad v. Pangelinan*, 32 F.Appx 357, 359 (affirming district court’s exercise of jurisdiction over the case and parties); Order Granting Motion to Compel and Motion for Sanctions at 1-2 (No. 411) (April 1, 2004) (denying objections to jurisdiction); Order Holding John S. Pangelinan in Civil Contempt of Court at 7, N.5 (Oct. 23, 2006).

1 Mafnas, nothing could be further from the truth. There is no constitutional
 2 right to receive a writ of ejectment and Pangelinan fails to point to any
 3 authority on which such a right can be hinged. Because 7 CMC § 4203 does
 4 not require an auction of property pursuant to a writ of execution to be
 5 performed at the courthouse,^{4/} and because CNMI law does not empower a
 6 judgment debtor with a clear and unequivocal right to file a collateral attack on
 7 every judicial sale, Pangelinan's challenges to the procedures employed to
 8 satisfy the Underlying Judgment are groundless. *See Grable*, 25 F.3d 298,
 9 303, (6th Cir. 1994); *Read v. Elliott*, 94 F.2d 55, 59 (4th Cir.1938); *Lansburgh*
 10 *v. McCormick*, 224 F. 874, 876 (4th Cir.1915).

12 CONCLUSION

13 Pangelinan faults Alexander and Mafnas for the loss of his property on
 14 the theory that the taking of his land via writ of execution and the delivery of
 15 the deed to Mr. Mafnas contravened federal law and unspecified federal
 16 statutes. Undisputed facts, however, prove otherwise. The Papago Property
 17 was executed against to satisfy the Underlying Judgment in accordance with
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 20 ⁴ *Yazoo & M.V.R.*, moreover, is distinguishable in other material respects. First,
 21 *Yazoo* plainly held that the statute on which Pangelinan relies only applies to judicial
 22 sales, and not to sales of execution. At issue in *Yazoo* were certain stock certificates that
 23 were to be sold pursuant to the state law of Mississippi. Unlike the law of the
 Commonwealth, Mississippi state law at this time required the sale to be made at the
 county courthouse. 257 U.S. at 17. Therefore, the sale was defective for its failure to
 comply with state law – and not for any defect that could not be cured under 28 U.S.C. §
 2001.

1 the procedures permitted by Fed. R. Civ. P. 69 and CNMI law. Pangelinan,
2 moreover, was afforded multiple opportunities to participate in the process, just
3 as he was afforded ample opportunity to satisfy the Underlying Judgment
4 through other means. Since the Papago Property was not taken in retaliation
5 for the exercise of his First Amendment rights but to satisfy the Underlying
6 Judgment, there can be no claim against Messrs. Alexander and Mafnas for
7 retaliatory denial of due process of law on these grounds.
8

9 Moreover, although Pangelinan takes pains to point out that Alexander
10 testified against him at court hearings and before the grand jury, and that he
11 filed a “negative statement” and delivered a deed to the Papago land to Mafnas,
12 there is no allegation that Alexander offered perjured testimony to obtain an
13 indictment without probable cause, or that he did anything but carry out the
14 court’s order as directed. *See* Report on Notice of Sale for June 2, 2006 (No.
15 507); Complaint at ¶¶ 7, 10, 13.^{5/} Since Pangelinan has likewise failed to
16 plead any participation by Mafnas beyond that of a good faith purchaser, he
17 has failed to make even the most cursory showing of how Mafnas violated his
18 rights or denied him due process. Accordingly, all claims against Mafnas and
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20 ⁵ For these reasons, Alexander is also entitled either to absolute, quasi- judicial
21 immunity. Absolute judicial immunity protects an officer of the court who lawfully
22 executes a valid court order. *See Coverdell v. Department of Soc. and Health Servs.*, 834
23 F.2d 758, 764-65 (9th Cir.1987); *see also Singh v. Magee*, 1 Fed.Appx. 713, 714 (9th
Cir.2001). Furthermore, “[a]n absolute immunity [defense] defeats a suit at the outset, so
long as the official's actions were within the scope of the immunity.” *See Imbler v.*
Pachtman, 424 U.S. 409, 419 n. 13, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976).

1 rights or denied him due process. Accordingly, all claims against Mafnas and
2 Alexander are entirely baseless.

3 Respectfully submitted this 7th day of March, 2008.

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5 ROBERT TENORIO TORRES, ESQ.

6 Attorney for Roy E. Alexander and Rufo T. Mafnas

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